REMARKS:

Status Of Claims

Claims 1, 5-10, 19-23, 27-34, and 38-67 were previously pending in the application. Claims 52 and 53 have been amended. Thus, claims 1, 5-10, 19-23, 27-34, and 38-67 are currently pending in the application with claims 1, 19, 23, 34, 44, 45, 47, 48, and 54 being independent.

Office Action

In the Office Action, the Examiner rejected claims 52 and 53 under 35 U.S.C. § 112, second paragraph. Claims 52 and 53 have been amended to obviate this ground of rejection. Therefore, this amendment at least places the application in a better condition for appeal. Thus, Applicant respectfully requests that this amendment be entered after Final Action.

The Examiner also rejected claims 19, 20, and 22 under 35 U.S.C. 102(b) as being anticipated Bailey et al., U.S. Patent No. 4,873,676. The Examiner also rejected claims 1, 5-10, 23, 27-32, 34, 38-40, 42-44, 58-61, 66, and 67 under 35 U.S.C. 103(a) as being unpatentable over Fujimoto et al., U.S. Patent Application No. 2004/0006423 (Fujimoto '423) in view of Michaelson et al., U.S. Patent No. 6,734,808. The Examiner also rejected claim 21 under 35 U.S.C. 103(a) as being unpatentable over Bailey in view of Fujimoto '423. The Examiner also rejected claim 33 under 35 U.S.C. 103(a) as being unpatentable over Fujimoto '423 and Michaelson, in view of Tobin Jr., U.S. Patent No. 4,323,992. The

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Examiner also rejected claim 41 under 35 U.S.C. 103(a) as being unpatentable over

Fujimoto '423 and Michaelson in view of Bailey. The Examiner also rejected claims 45, 46,

and 62 under 35 U.S.C. 103(a) as being unpatentable over Fujimoto '423 and Michaelson

in view of Walsh et al., U.S. Patent No. 3,886,487. The Examiner also rejected claims 47-

57 and 63-65 under 35 U.S.C. 103(a) as being unpatentable over Fujimoto et al., U.S.

Patent Application No. 2004/0003958 (Fujimoto '958), in view of Fujimoto '423 and

Michaelson. Applicant respectfully submits that the currently pending claims distinguish

the present invention from both Fujimoto references, Tobin, Bailey, Michaelson, Walsh,

and the other prior art references of record, taken alone or in combination with each other.

Anticipation

"A claim is anticipated only if each and every element as set forth in the claim is

found, either expressly or inherently described, in a single prior art reference." MPEP §

2131, citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d

1051, 1053 (Fed. Cir. 1987). More specifically, "Federal Circuit decisions repeatedly

emphasize that anticipation (lack of novelty) is established only if (1) all the elements of an

invention, as stated in a patent claim, (2) are identically set forth, (3) in a single prior art

reference". Chisum on Patents § 3.02. *See also* Gechter v. Davidson, 43 USPQ2d 1030,

1032 (Fed. Cir. 1997) ("Under 35 U.S.C. § 102, every limitation of a claim must identically

appear in a single prior art reference for it to anticipate the claim.").

Claim 19 recites "analyzing cartographic data only within the user defined graphical

filter area for the preselected conditions". The Examiner mistakenly asserts that this limitation is disclosed by Bailey in column 3, lines 26-36 and 46-48. However, column 3, lines 26-29 state "[a]utomatic display scale changing is provided in response to the detected bottom going off-scale, or in response to the detected bottom rising to within a predetermined depth". Therefore, Bailey actually rather clearly teaches a system for automatically **redefining** a display area based on changing water depth. In other words, rather than analyzing data only within a user defined area, Bailey teaches automatically redefining some user defined display area. In fact, on page 14 of the Final Office Action, the Examiner acknowledges "Bailey discloses an automatic display scale changing". Furthermore, Bailey analyzes the entirety of this automatically redefined display area for target data or sonar returns.

In column 3, lines 46-48, Bailey goes on to suggest user "selection of an area of interest" to be displayed. The Examiner appears to be focusing on this "customizable (user-defined)" display screen. Page 14 of the Final Office Action. However, a distinction must be drawn between what is displayed and what is analyzed. Bailey teaches only customizing a display. In fact, Bailey is completely devoid of any suggestion of "**analyzing** cartographic data **only** within the user defined graphical filter area", emphasis added. At best, lines 46-48 can only suggest displaying some limited area of interest.

In fact, Bailey doesn't teach "analyzing **cartographic** data", emphasis added, at all. Rather, as discussed above, Bailey teaches analyzing target data or sonar returns. Furthermore, Bailey must analyze all of the received target data or sonar returns. These

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are important distinctions in that Bailey's sonar signals, by their very nature, must pass completely through a predefined space under a boat. This space is predefined by the transducer itself. The *only* limits that *can* be imposed on this space are related to the maximum depth that the sonar signals reach. This is a function of transducer design and underwater obstacles, neither of which is under the user's control. In other words, the user simply cannot define where the sonar signals go, and therefore cannot define any area, and Bailey's device therefore cannot analyze only a portion of the returns. Simply put, Bailey cannot be said to suggest analyzing data *only* within a user defined area, much less "analyzing cartographic data only within the user defined graphical filter area for the preselected conditions", as claimed. As a result, Bailey simply fails to disclose, suggest or make obvious "analyzing cartographic data only within the user defined graphical filter area for the preselected conditions" as claimed in claim 19.

Obviousness

Obviousness can be a problematic basis for rejection because the Examiner, in deciding that a feature is obvious, has the benefit of the applicant's disclosure as a blueprint and guide. In contrast, one with ordinary skill in the art would have no such guide, in which light even an exceedingly complex solution may seem easy or obvious. Furthermore, once an obviousness rejection has been made, the applicant is in the exceedingly difficult position of having to prove a negative proposition (i.e., non-obviousness) in order to overcome the rejection.

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For these reasons, the law places upon the Examiner the initial burden of establishing a *prima facie* case of obviousness. If the Examiner fails to establish the requisite *prima facie* case, the rejection is improper and will be overturned. *In re Rijckaert,* 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955 (Fed. Cir. 1993). Only if the Examiner's burden is met does the burden shift to the Applicant to provide evidence to refute the rejection.

In meeting this initial burden, the Examiner "cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." *In re Fine,* 837 F.2d 1071, 1075, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). Thus, the Examiner is required to perform the "critical step" of casting his or her mind back to the time of invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field. *See, e.g., W. L. Gore & Assoc., Inc. v. Garlock, Inc.,* 721 F.2d 1540, 1553, 220 U.S.P.Q. 303 (Fed. Cir. 1983).

Rejections on obviousness grounds also cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *In re Kahn,* 441 F.3d 977, 988, 78 U.S.P.Q.2d 1329 (Fed. Cir. 2006). The factual inquiry performed by the Examiner in issuing an obviousness rejection must be thorough and searching. *McGinley v. Franklin Sports, Inc.,* 262 F.3d 1339, 1351-52, 60 U.S.P.Q.2d 1001 (Fed. Cir. 2001). The prohibition against conclusory examination is as much rooted in the Administrative Procedure Act, which ensures due process and non-arbitrary decision-making, as it is in § 103. *In re Kahn,* 441 F.3d at 988.

Three criteria must be satisfied by the Examiner in order to establish a prima facie case of obviousness: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine their teachings; (2) there must be a reasonable expectation of success; and (3) the combination of references must teach or suggest all the claim limitations. *See* MPEP § 706.02(j), *citing In re Vaeck,* 947 F.2d 488, 493, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). This "motivation-suggestion-teaching" requirement protects against the entry of hindsight into the obviousness analysis, a problem which § 103 was meant to confront. *In re Kahn,* 441 F.3d at 988.

Consequently, an Examiner's mere identification in the prior art of each individual element claimed is insufficient to defeat the patentability of a claimed invention without a proper suggestion to combine or modify the elements. *In re Rouffet,* 149 F.3d 1350, 1357, 47 U.S.P.Q.2d 1453 (Fed. Cir. 1998). The fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Gordon,* 733 F.2d 900, 902, 221 USPQ 1125 (Fed. Cir. 1984).

In presenting the suggestion or motivation to combine prior art references, the Examiner may not resort to broad and conclusory statements; as such statements are not "evidence" of anything. *In re Kotzab,* 217 F.3d 1365, 1370, 55 U.S.P.Q.2d 1313 (Fed. Cir. 2000). The suggestion to make the claimed combination must be found in the prior art, not in the applicant's disclosure. *In re Vaeck,* 947 F.2d at 490. If the Examiner's proposed

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combination renders the prior art invention unsatisfactory for its intended purpose, or changes its principal of operation, there can be no suggestion or motivation to form the combination—and thus no *prima facie* case of obviousness. *See* MPEP § 2143.01; *In re Gordon*, 733 F.2d at 902.

Claims 1, 23, 34, 44, and 45, stand rejected under various combinations of Fujimoto '423, Michaelson, and Walsh. Claim 1 recites "performing a marine route calculation algorithm to route a course between a first location and the potential waypoint avoiding the preselected conditions, including analyzing cartographic data between the first location and the potential waypoint and re-routing the course to avoid the preselected conditions by identifying one or more non-user selected waypoints". Similarly, claim 23 recites "performing a marine route calculation algorithm to analyze a course between a first location and the potential waypoint avoiding the preselected conditions, including analyzing cartographic data between the first location and the potential waypoint and re-routing the course to avoid the preselected conditions by identifying one or more non-user selected waypoints". Claim 34 recites "wherein the processor operates on a marine route calculation algorithm to analyze a course between the first location and the potential waypoint in view of the preselected conditions of the cartographic data and re-route the course to avoid the preselected conditions by identifying one or more non-user selected waypoints". Claim 44 recites "performing a marine route calculation algorithm to analyze a course between a first location and the potential waypoint in order to avoid preselected conditions received from a user and re-route the course to avoid the preselected conditions

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by identifying one or more non-user selected waypoints". Claim 45 recites "performing a marine route calculation algorithm to route a course between a first location and the potential waypoint avoiding water depth less than the minimum water depth by identifying one or more non-user selected waypoints".

In contrast, the Examiner acknowledges that "Fujimoto discloses identifying user waypoints … but does not disclose non-user waypoints". Page 4 of the Final Office Action. To cure this defect, the Examiner mistakenly asserts that "Michaelson, on the other hand discloses re-routing the course by identifying one or more non-user waypoints". Page 4 of the Final Office Action. In supporting this assertion, the Examiner points to column 24 lines 41-50 and 55-64. The Examiner also points to column 13, line 56, through column 14, line 4.

However, column 24 clearly states that Michaelson's invention merely "alerts the crew to a new heading to steer or engine setting to avoid collisions". Column 24, lines 38-41. Specifically, column 24, lines 57-58, state an "alternate track PT' is first generated by incrementing the ship's heading by [a] nominal step size". Columns 13 and 14, on the other hand, merely disclose providing warnings such as "go shallow" to avoid grounding a submarine. Thus, Michaelson only suggests a heading and/or depth change to avoid an obstacle. In fact, Michaelson is devoid of any suggestion of "***identifying one or more non-user selected waypoints***", emphasis added, as claimed.

Walsh doesn't even suggest an alternate heading/depth. Specifically, as stated in column 9, lines 6-10, Walsh merely discloses transmitting "as signal to the alarm 188 which

in turn then warns the operator of the ship 20 to change course or take other evasive action", when the depth ahead is too shallow. In other words, Walsh simply provides a warning of an impending collision/grounding. Thus, Walsh fails to even provide a suggested heading and/or depth change, much less non-user selected waypoints that may be used to avoid the hazard.

As a result, no combination of Fujimoto '423, Michaelson, and/or Walsh discloses, suggests or makes obvious "performing a marine route calculation algorithm to route a course between a first location and the potential waypoint avoiding the preselected conditions, including analyzing cartographic data between the first location and the potential waypoint and re-routing the course to avoid the preselected conditions by identifying one or more non-user selected waypoints", as claimed in claim 1. No combination of Fujimoto '423, Michaelson, and/or Walsh discloses, suggests or makes obvious "performing a marine route calculation algorithm to analyze a course between a first location and the potential waypoint avoiding the preselected conditions, including analyzing cartographic data between the first location and the potential waypoint and re-routing the course to avoid the preselected conditions by identifying one or more non-user selected waypoints", as claimed in claim 23. No combination of Fujimoto '423, Michaelson, and/or Walsh discloses, suggests or makes obvious "wherein the processor operates on a marine route calculation algorithm to analyze a course between the first location and the potential waypoint in view of the preselected conditions of the cartographic data and re-route the course to avoid the preselected conditions by identifying one or more non-user

selected waypoints", as claimed in claim 34. No combination of Fujimoto '423, Michaelson, and/or Walsh discloses, suggests or makes obvious "performing a marine route calculation algorithm to analyze a course between a first location and the potential waypoint in order to avoid preselected conditions received from a user and re-route the course to avoid the preselected conditions by identifying one or more non-user selected waypoints", as claimed in claim 44. No combination of Fujimoto '423, Michaelson, and/or Walsh discloses, suggests or makes obvious "performing a marine route calculation algorithm to route a course between a first location and the potential waypoint avoiding water depth less than the minimum water depth by identifying one or more non-user selected waypoints", as claimed in claim 45.

Furthermore, the Examiner fails to provide the requisite suggestion or motivation to combine Fujimoto '423, Michaelson, and/or Walsh. Rather, with respect to claims 1 and 44, the Examiner asserts "[i]t would have been obvious to disclose non-user waypoints so that an operator of a ship relies on automatic navigation between a point of origin and a destination without constantly monitoring the ship's travel route". Page 4 of the Final Office Action.

However, the test is not what might "have been obvious to disclose". Rather, there must be some suggestion, found in the prior art rather than the applicant's disclosure, to combine one prior art reference with another. Here, as discussed above, the references don't even teach what the Examiner asserts, much less provide any suggestion or motivation to combine their teachings.

With respect to claim 45, the Examiner asserts "[i]t would have been obvious to avoid a water depth less than the minimum water depth so that a ship's operator acknowledges a dangerous water depth and verifies that the ship is maneuvered around or away from an insufficient water depth to ensure the safety of the ships' passengers". However, this assertion does not provide any motivation to actually identify "one or more non-user selected waypoints", as claimed, certainly not over Michaelson's warnings and suggestion of a heading change. In other words, once the crew has been alerted and even given a new heading the steer, as taught by Michaelson, any such motivation would be satisfied. Specifically, once the crew has been alerted and even given a new heading, there would be no need for Walsh's warning. Therefore, the stated motivation doesn't actually provide any motivation to combine Walsh with the system of Michaelson, much less any motivation that might render the present claims obvious.

Thus, not only does the Examiner fail to cite references that teach each and every claim limitation, the Examiner also fails to provide the requisite suggestion or motivation to combine references. As a result, the Examiner has failed to establish a *prima facie* case of obviousness, and therefore the present rejections cannot be sustained.

Claims 47, 48, 51, and 54 stand rejected under Fujimoto '958, Fujimoto '423, and Michaelson. Claim 47 recites "displaying a substantially straight line between a first location and the potential waypoint, wherein the line depicts both where the water depth is expected to be greater than the minimum water depth and where the water depth is expected to be less than the minimum water depth, and wherein the line highlights where

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the water depth is expected to be less than the minimum water depth". Similarly, claim 48 now recites "displaying a substantially straight line between a first location and the potential waypoint, wherein the line distinguishes where the water depth is expected to be greater than a preset minimum water depth from where the water depth is expected to be less than the minimum water depth". Claim 51 recites "wherein the line is displayed on the marine cartographic data in a plan view". Claim 54 recites "displaying a substantially straight line on the marine cartographic data between a first location and the potential waypoint, wherein the line highlights where the water depth is expected to be less than a minimum water depth".

In contrast, the only straight line the Examiner points to, Fujimoto '958's item 45, is depicted completely independently of water depth. In fact, Fujimoto '958's item 45 "designates an alarm water depth line". ¶ 73. This line is arbitrarily set by the user as a minimum water depth, above which Fujimoto '958's apparatus provides an alarm. Therefore, as taught by Fujimoto '958, this line, item 45, as well as all other lines taught by Fujimoto '958, is necessarily displayed on a sonar display, rather than "between a first location and the potential waypoint", much less "on the marine *cartographic* data", emphasis added, or "wherein the line is displayed on the marine cartographic data in a plan view", as claimed.

Fujimoto '958's only line that relates to an actual water depth is item 43, which depicts a seabed and therefore simply cannot be substantially straight. Of course, displaying item 43 as substantially straight would render it unsatisfactory for its intended

purpose, namely depicting the seabed. Furthermore, as discussed above, this line, item 43, is necessarily displayed on a sonar display, rather than "between a first location and the potential waypoint", much less "on the marine *cartographic* data", emphasis added, or "wherein the line is displayed on the marine cartographic data in a plan view", as claimed.

Finally, neither of these lines, themselves, actually highlight or distinguish where the water depth is above or below a minimum. In fact, the Examiner acknowledges that "Fujimoto does not disclose highlighting the water depth line". Page 11 of the Final Office Action. In order to cure this defect, the Examiner asserts "Michaelson discloses highlighting a terrain threat indication". Pages 11 and 12 of the Final Office Action. However, the Examiner fails to cite to any portion of Michaelson that teaches this. In fact, Michaelson does not include any variation on the word "highlight". Michaelson simply does not teach highlighting or distinguishing any portion of any *line* "between a first location and the potential waypoint", much less any line "on the marine *cartographic* data", emphasis added, or "wherein the line is displayed on the marine cartographic data in a plan view", as claimed.

As a result, no combination of either Fujimoto reference and/or Michaelson discloses, suggests or makes obvious "displaying a substantially straight line between a first location and the potential waypoint, wherein the line depicts both where the water depth is expected to be greater than the minimum water depth and where the water depth is expected to be less than the minimum water depth, and wherein the line highlights where the water depth is expected to be less than the minimum water depth", as claimed in claim

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47, "displaying a substantially straight line between a first location and the potential waypoint, wherein the line distinguishes where the water depth is expected to be greater than a preset minimum water depth from where the water depth is expected to be less than the minimum water depth", as claimed in claim 48, "wherein the line is displayed on the marine cartographic data in a plan view", as claimed in claim 51, or "displaying a substantially straight line on the marine cartographic data between a first location and the potential waypoint, wherein the line highlights where the water depth is expected to be less than a minimum water depth", as claimed in claim 54.

Furthermore, the Examiner fails to provide the requisite suggestion or motivation to combine Fujimoto '958, Fujimoto '423, and/or Michaelson. Rather, the Examiner's asserted motivation is found only in Applicant's own disclosure. Specifically, as discussed above, none of the prior art references actually teach emphasizing "a water depth line by highlighting", as asserted by the Examiner. Page 12 of the Final Office Action. Such teachings are found only in Applicant's own disclosure. In contrast, as discussed above, in order to establish a *prima facie* case of obviousness, there must be some suggestion, found in the prior art rather than the applicant's disclosure, to combine one prior art reference with another. Here, as discussed above, the references don't even teach what the Examiner asserts, much less provide any suggestion or motivation to combine their teachings.

Thus, not only does the Examiner fail to cite references that teach each and every claim limitation, the Examiner also fails to provide the requisite suggestion or motivation to

combine references. As a result, the Examiner has failed to establish a *prima facie* case of obviousness, and therefore the present rejections cannot be sustained.

Claim 50 recites "wherein the line is depicted in a first manner where the water depth is expected to be greater than the minimum water depth and the line is depicted in a second manner where the water depth is expected to be less than the minimum water depth".

The Examiner mistakenly asserts that Fujimoto '958 teaches these limitations. However, as discussed above, Fujimoto '958 merely displays a seabed line 125 above or below a depth mark 124, as the case may be, but the seabed line 125 is otherwise displayed in the exact same manner. In fact, the Examiner acknowledges that "Fujimoto does not disclose highlighting the water depth line". Page 11 of the Final Office Action. The Examiner also acknowledges that "Fujimoto … does not disclose first and second manners of displaying a line". Page 12 of the Final Office Action. Simply put, there is no difference in the line itself or the manner in which it is displayed, such as highlighting color, solid vs. broken or dashed, whether that portion of the line is flashing, or whether that portion of the line is bolded. In fact, Fujimoto '958 lacks any suggestion to show any portion of the seabed line 123 in a different manner. As a result, no combination of either Fujimoto reference and/or Michaelson discloses, suggests or makes obvious "wherein the line is depicted in a first manner where the water depth is expected to be greater than the minimum water depth and the line is depicted in a second manner where the water depth is expected to be less than the minimum water depth", as claimed in claim 50.

Claim 52 recites "wherein the first manner is different from the second manner, such that the line itself is displayed differently in the first manner compared with the second manner". Claim 53 recites "wherein the first manner comprises displaying the line in a first color and the second manner comprises displaying the line in a second color different from the first color". Claim 57 recites "wherein the line is displayed in a different manner where the water depth is expected to be less than a minimum water depth". Claim 65 recites "wherein the line is displayed in a first manner where the water depth is expected to be greater than the preset minimum water depth and a second manner, different from the first manner, where the water depth is expected to be less than the minimum water depth".

For example, this capability is shown in figures 2A, 4A, and 4C and described on pages 11-14, among other places. Of course, claim 48, from which claims 52 and 53 depend, recites "displaying a substantially straight line between a first location and the potential waypoint". Similarly, claim 54, from which claim 57 depends, recites "displaying a substantially straight line on the marine cartographic data between a first location and the potential waypoint". Finally, claim 47, from which claim 65 depends, recites "displaying a substantially straight line between a first location and the potential waypoint". Thus, the line is substantially straight and depicts a path between two points. Furthermore, in the case of claim 57, the line is displayed on "marine cartographic data".

In contrast, the Examiner acknowledges that "Fujimoto ... does not disclose first and second manners of displaying a line". Page 12 of the Final Office Action. In order to cure this defect, the Examiner asserts "Michaelson discloses first and second colors to display

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terrain indications". Page 12 of the Final Office Action. In supporting this assertion, the Examiner points to column 27, lines 40-65. However, Michaelson's terrain indications are simply not analogous to the presently claimed line. Specifically, Michaelson merely teaches varying the color of the displayed terrain data itself, rather than any path through the terrain. *See* column 27, lines 48-65. As a result, no combination of either Fujimoto reference and/or Michaelson discloses, suggests or makes obvious "wherein the first manner is different from the second manner, such that the line itself is displayed differently in the first manner compared with the second manner", as claimed in claim 52, "wherein the first manner comprises displaying the line in a first color and the second manner comprises displaying the line in a second color different from the first color", as claimed in claim 53, "wherein the line is displayed in a different manner where the water depth is expected to be less than a minimum water depth", as claimed in claim 57, or "wherein the line is displayed in a first manner where the water depth is expected to be greater than the preset minimum water depth and a second manner, different from the first manner, where the water depth is expected to be less than the minimum water depth", as claimed in claim 65.

Claim 55 recites "performing a marine route calculation algorithm to route a course from the first location to the potential waypoint avoiding areas where the water depth is expected to be less than the minimum water depth by identifying one or more non-user selected waypoints". Claims 63 and 66 each recite "wherein the step of performing a marine route calculation algorithm includes identifying one or more non-user selected

waypoints". Similarly, claims 56, 58-62, 64, and 67 each recite "displaying the course from the first location to the potential waypoint via the non-user selected waypoints".

In contrast, as discussed above, no combination of either Fujimoto reference and/or Michaelson discloses, suggests or makes obvious "identifying one or more non-user selected waypoints", as claimed in claims 55, 63, and 66, or "displaying the course from the first location to the potential waypoint via the non-user selected waypoints", as claimed in claims 56, 58-62, 64, and 67, much less in combination with the other limitations of these claims.

The remaining claims all depend directly or indirectly from independent claims 1, 19, 23, 34, 45, or 48, and are therefore also allowable.

Any additional fee which is due in connection with this amendment should be applied against our Deposit Account No. 501-791. In view of the foregoing, a Notice of Allowance appears to be in order and such is courteously solicited.

Respectfully submitted,

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